

IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA
(APPELLATE JURISDICTION)

DC CRIMINAL APPEAL NO. 6 OF 2021

(Originating from Dodoma District Court in Criminal Case No. 81 of 2019)

ROBISON BRYTON DIZOMBEAPPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

4/8/2021 & 1/9/2021

JUDGMENT

MASAJU, J

The Appellant, Robison Bryton Dizombe, was charged with, and convicted of ARMED ROBBERY Contrary to Section 287 A of the Penal Code, [Cap. 16 RE 2002] and RAPE Contrary to Sections 130(1) (2) (a) and 131(1) of the Penal Code, [Cap. 16 RE 2002] in the District Court of Dodoma at Dodoma. He was sentenced to serve thirty (30) years imprisonment and corporal punishment six (6) strokes on each offences the custodial sentence running concurrently, hence this meritorious appeal to the Court, against the conviction and sentence. His Petition of Appeal is made up nine (9) grounds of appeal, including the grounds on his mistaken

identification and non-proof of the offence beyond reasonable doubt as against him before the trial court.

When the Appeal was heard in the Court on the 10th day of June, 2020 the layman Appellant appeared in person and adopted his grounds of Appeal to form his submissions in support of the Appeal in the Court. He prayed the Court to allow the Appeal because he did not count the crimes.

The Respondent Republic, in the service of Catherine Gwantu, the learned Senior State Attorney, readily conceded the grounds of Appeal on identification as she submitted that there was no evidence that the appellant was unmistakably identified at the scene of crime and the Identification Parade thereof was fraught with procedural irregularities pursuant to **Alex Lomali VR.** (CAT) Criminal Appeal No. 335 of 2015 Arusha Registry. Hence wanting identification evidence as against the Appellant before the trial Court.

The Respondent also submitted that the offences were allegedly committed by the Appellant in the presence of the victim of crime's friend, one Fredrick, the said would be key witness could have been made part of the prosecution witness lest the adverse inference was drawn against the prosecution case as so held in **Aziz Abdallah V.R [1991] TLR 71.**

That said, indeed the Appeal is meritorious, there was no proof of the alleged offence being committed on the material day. The victim of the crime was allegedly raped and arm robbed by the Appellant, but there was no medical evidence of proof of the alleged rape, for there was neither

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medical officer who testified to that effect nor medical examination Report thereof. One Fredrick who was allegedly present at the scene of crime when the victim of crime Agatha Modestus (PW1) was allegedly raped and armed robed by the Appellant did not testify in the prosecution case before the trial Court thereby rendering the prosecution case allegations against the Appellant too wanting to prove the case against the Appellant beyond reasonable doubt.

The meritorious appeal is therefore hereby allowed accordingly. The conviction and sentence are hereby quashed and set aside. The Appellant shall be released from prison forthwith unless there was a lawful cause to the contrary.



GEORGE M. MASAJU

JUDGE

01/09/2021